

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36420

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| STATE OF IDAHO, |) | 2010 Unpublished Opinion No. 336 |
| |) | |
| Plaintiff-Respondent, |) | Filed: February 2, 2010 |
| |) | |
| v. |) | Stephen W. Kenyon, Clerk |
| |) | |
| BONITA LYNN CAMPBELL, |) | THIS IS AN UNPUBLISHED |
| |) | OPINION AND SHALL NOT |
| Defendant-Appellant. |) | BE CITED AS AUTHORITY |
| |) | |

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Order relinquishing jurisdiction and ordering previously imposed sentence into execution, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sara B. Thomas, Chief, Appellate Unit, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GUTIERREZ, Judge
and MELANSON, Judge

PER CURIAM

Bonita Lynn Campbell was charged with possession of a controlled substance, methamphetamine, and with possession of drug paraphernalia. Pursuant to a plea agreement, Campbell pled guilty to possession of methamphetamine, Idaho Code § 37-2732(c), and the state dismissed the paraphernalia charge. Campbell was sentenced to a unified term of five years, with one year determinate and the district court retained jurisdiction. After Campbell completed her rider, the district court relinquished jurisdiction and ordered the previously imposed sentence into execution. Campbell filed an Idaho Criminal Rule 35 motion for reduction of sentence,

which the district court denied. Campbell appeals, contending that the district court abused its discretion by relinquishing jurisdiction and by denying her Rule 35 motion.

The decision to place a defendant on probation or whether, instead, to relinquish jurisdiction is a matter within the sound discretion of the district court and will not be overturned on appeal absent an abuse of that discretion. *State v. Longoria*, 133 Idaho 819, 826, 992 P.2d 1219, 1226 (Ct. App. 1999) (citing *State v. Hood*, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981)). As explained in *State v. Merwin*, 131 Idaho 642, 648-49, 962 P.2d 1026, 1032-33 (1998):

“Refusal to retain jurisdiction will not be deemed a ‘clear abuse of discretion’ if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under [the statute].” *State v. Chapel*, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984) (citation omitted). While a Review Committee report may influence a court’s decision to retain jurisdiction, “it is purely advisory and is in no way binding upon the court.” *State v. Landreth*, 118 Idaho 613, 615, 798 P.2d 458, 460 (Ct. App. 1990). Idaho Code § 19-2521 sets out the criteria a court must consider when deciding whether to grant probation or impose imprisonment. . . . “A decision to deny probation will not be held to represent an abuse of discretion if the decision is consistent with [the § 19-2521] standards.” *State v. Smith*, 123 Idaho 290, 293, 847 P.2d 265, 268 (Ct. App. 1993).

Having reviewed the information that was before the district court when it relinquished jurisdiction over Campbell, including the addendum to the presentence investigation report, we find no abuse of discretion in the decision to relinquish jurisdiction and in ordering into execution the previously imposed sentence of five years, with one year determinate, for possession of methamphetamine.

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). Applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion by denying Campbell’s Rule 35 motion for reduction of sentence.

Therefore, the district court’s order relinquishing jurisdiction and imposing sentence is affirmed, as is the denial of Campbell’s Rule 35 motion.